THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 10

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

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Ex parte MARK J. KUCIRKA

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Appeal No. 97-4177
Application 08/502,276[1]

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ON BRIEF

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Before MEISTER, STAAB, and CRAWFORD, Administrative Patent Judges.

MEISTER, Administrative Patent Judge.

DECISION ON APPEAL

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[1] Application for patent filed July 13, 1995. According to appellant, this application is a continuation-in-part of Application 08/067,136, filed May 26, 1993, now abandoned

Mark J. Kucirka (the appellant) appeals from the final rejection of claims 1-26, the only claims present in the application.

We REVERSE.

The appellant's invention pertains to (a) an assembly of joists that are interconnected by bridging which includes flexible straps, (b) a method of installing bridging among a plurality of joists and (c) a method of aligning misaligned joists. Independent claims 1, 18 and 24 are further illustrative of the appealed subject matter and copies thereof may be found in the appendix to the brief.

The references relied on by the examiner are:

Paine Sr. (Paine)	457,664	Aug. 11, 1891
Powell	1,523,711	Jan. 20, 1925
Lane	1,656,741	Jan. 17, 1928
Gstalder	2,442,726	Jun. 1, 1948
Tracy	3,596,941	Aug. 3, 1971
Schoeller	4,038,803	Aug. 2, 1977
Bodell	5,224,309	Jul. 6, 1993
Menig (Swiss)	323,249	Sep. 14, 1957

RAPZ Strapping Products Catalogue (RAPZ), "RAPZ Strapping Products, Steel Strapping Tools and Accessories," RAPZ Strapping Products, pp. 1-21, 1990.

The claims on appeal stand rejected under 35 U.S.C. § 103 in the following manner:[2]

(1) Claims 1-5, 12, 18 and 20 as being unpatentable over Powell in view of Paine and RAPZ;

(2) Claims 6-11 and 21-23 as being unpatentable over Powell in view of Paine, RAPZ and the Swiss patent;

(3) Claims 13-15 as being unpatentable over Powell in view of Paine, RAPZ and Gstalder;

(4) Claim 16 as being unpatentable over Powell in view of Paine, RAPZ, Gstalder and Tracy;

(5) Claim 17 as being unpatentable over Powell in view of Paine, RAPZ and Bodell;

(6) Claim 19 as being unpatentable over Powell in view of Paine, RAPZ and Lane; and

(7) Claims 24-26 as being unpatentable over Powell in view of Paine, RAPZ and Schoeller.

Each of the above-noted rejections is bottomed on the examiner's view that

> it would have been obvious to one with ordinary skill in the art to modify Powell's bridging to

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[2] A complete explanation of the rejections may be found on pages 4-10 of the answer.

> replace the single flexible strap between the two joists with two separate flexible strap lengths between the two joists connected at a connection point therebetween as taught by Paine in order to provide secure bracing between two joists which provides more versatility by being able to shorten or lengthen the bridging as needed and which simplifies installation because the worker would not be required to manage an awkward and bulky bundle of the flexible strapping. Further, it would be [sic, have been] obvious that the connection of Paine is not appropriate for use with strapping, but connection means for strapping are well known in the art and RAPZ teaches a common connection means for strapping, i.e. with a tensioner or sealer. It would be [sic, have been] obvious to one with ordinary skill in the art to utilize a connection means known and commonly used for strapping, such as taught by RAPZ, in order to adequately secure the two piece flexible strapping of Powell/Paine with a connection means conducive to the material of strapping. [Answer, pages 4 and 5.]

We will not support the examiner's position. The mere fact that (a) two separate flexible strap lengths between two joists would provide "more versatility by being able to shorten or lengthen the bridging" and (b) a connection means is "commonly used" in order to connect the ends of tensioned straps does not serve as a proper motivation for combining the teachings of Powell, Paine and RAPZ in the manner proposed as the examiner apparently believes. Instead, it is well settled that it is the teachings of the prior art taken as a whole which must provide the motivation or suggestion to combine the

references. ***See Uniroyal, Inc. v. Rudkin-Wiley Corp.***, 837 F.2d 1044, 1051, 5 USPQ2d 1434, 1438 (Fed. Cir. 1988) and ***Interconnect Planning Corp. v. Feil***, 774 F.2d 1132, 1142-43, 227 USPQ 543, 550-51 (Fed. Cir. 1985). Here, we find no such suggestion.

Powell, while teaching the use of flexible strapping material as bridging between joists, teaches that the procedure for using such material is to: (1) first, provide an indeterminate length of such material, (2) second, fasten one end of the strapping material to one of the joists, (3) third, thread the other or free end of the strapping material "over and under" the joists (page 1, line 54), (4) fourth, place the ***entire length*** of strapping material under a predetermined tension by engaging the other or free end with a tensioning tool 4,5,6 and (5) fifth, nail the strapping material to the tops and bottoms of the joists. Paine, while teaching that the bridging between adjacent joists may be formed by two bracing members c,c which are adjustably connected together (see Fig. 3), provides no teaching or suggestion of tensioning these members. RAPZ is not concerned with providing bridging between joists but, instead, merely teaches the joining

together of the opposite ends of a ***single*** length of strapping material while held under tension for the purpose of providing a binding on a package or bundle (see, e.g., page 3). What is entirely missing from these three references is any fair suggestion of connecting together the ends of two ***separate*** flexible bridging members with a predetermined tension. In our view, the examiner has impermissibly relied upon the appellant's own teachings in arriving at a conclusion of obviousness. As the court in ***Uniroyal***, 837 F.2d at 1051, 5 USPQ2d at 1438 stated "it is impermissible to use the claims as a frame and the prior art references as a mosaic to piece together a facsimile of the claimed invention."

As to rejections (2) through (7), we have carefully reviewed the teachings of the Swiss patent, Gstalder, Tracy, Bodell, Lane and Schoeller but find nothing therein which would overcome the deficiencies of Powell, Paine and RAPZ that we have noted above.

The decision of the examiner to reject claims 1-26 under 35 U.S.C. § 103 is reversed.

REVERSED

James M. Meister Administrative Patent Judge	)	
Lawrence J. Staab Administrative Patent Judge	)	BOARD OF PATENT APPEALS AND INTERFERENCES
Murriel E. Crawford Administrative Patent Judge	)	

tdc

Eric A. LaMorte
985 Reading Avenue
Yardley PA 19067